



ORDER

OF THE

**WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN THE MATTER OF
CASE NO: APR(R)-13/21-22**

IN REGARD TO THE REVIEW PETITION FILED BY WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED (WBSEDCL) UNDER REGULATION 3.3 READ WITH REGULATION 3.10, 3.11 AND 3.12 OF THE CONDUCT OF BUSINESS REGULATION, 2013 OF THE COMMISSION AGAINST THE ORDER DATED 14.07.2021 IN CASE NO. FPPCA-70/14-15 AND APR-46/14-15

PRESENT:

**DR. MALLELA VENKATESWARA RAO, CHAIRPERSON
SRI PULAK KUMAR TEWARI, MEMBER**

DATE: 06.04.2023



In regard to petition submitted by the West Bengal Power Development Corporation Limited for fresh consideration of issues in the Fuel Cost Adjustment (FCA) and Annual Performance Review (APR) for the financial year 2013-14 in terms of the order dated 15.07.2019 passed by the Hon'ble Appellate Tribunal for Electricity in appeal no. 348 of 2017.



CASE IN BRIEF

- 1.0 West Bengal State Electricity Distribution Company Limited ('WBSEDCL' or petitioner) has filed the instant petition (to be called as 'review petition') seeking review of the order and direction dated 14.07.2021 in case no. FPPCA-70/14-15 and APR-46/14-15 (to be called as 'Impugned Order') determining the fuel and power purchase cost Adjustment (FPPCA) and Annual Performance Review (APR) for the year 2013-14. Commission passed the order determining the FPPCA and APR for the year 2013-14 as per provision of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, as amended (hereinafter to be referred as "MYT Regulation 2011").
- 2.0 WBSEDCL has submitted that the Commission allowed their claim on certain issues in the APR order which are not raised in their review petition and only those issues where WBSEDCL is facing material hardships on account of untenable disallowances are raised in their review petition. The issues which are pressed in this review petition are as follows:

Sl. No.	Description	Relevant Para in the Impugned Order dated 14.07.2021
1	Carrying Cost of Regulatory Asset	4.27
2	Cost of Outsourcing including manpower and vehicle hiring cost	4.5
3	Operation and Maintenance Expenses	4.3
4	Amount withheld for Energy Audit	5.8
5	Income from non-tariff sources	4.22
6	Others (Inclusion of compensation as controllable factor)	4.28
7	Employee Cost for FY 2013-14	4.8
8	Actual Revenue Billed	5.1 to 5.10
9	Interest on Loan	4.13
10	Reserve for Unforeseen Exigencies	4.19

- 3.0 Issue wise submission of WBSEDCL/ Observation of the Commission are given below:



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Issue No. 1 : Carrying Cost of Regulatory Asset

- a. The Commission has withheld the carrying cost of Rs. 58922 lakhs for the period of 01.04.2013 to 31.03.2014 i.e. for the FY 2013-14 with respect to the Regulatory Asset created in the APR order for FY 2009-10 and balance Regulatory Asset created against APR for 2010-11, stating that the Commission decided not to consider any carrying cost on Regulatory Asset as claimed by the petitioner and will however be considered after releasing the Regulatory Asset through future orders.
- b. Total carrying cost against Regulatory Asset becomes Rs. 58922 lakhs for the FY 2013-14 and the Commission has without any cogent basis and by way of complete deviation from the past practice decided to not consider the said claim and has deferred the same to be considered on future orders.
- c. In support of their claim WBSEDCL has referred to the provision in National Tariff Policy 2016 and the order of the Hon'ble Appellate Tribunal for Electricity (APTEL) in OP no. 1 of 2011.
- d. Prior to the impugned order, Commission has allowed carrying cost in APR order for the amount admitted but not released in tariff upto the year of APR order. Thus there is a deviation in the impugned order from previous practice of the Commission which would have service impact on their cash flow and working capital management.
- e. Prayed for allowing carrying cost on regulatory asset totaling to an amount of Rs. 5822 lakhs.

Observation of the Commission:

The Commission disallowed the carrying cost giving detail reason of disallowance in APR order for 2013-14. Thus, the Commission find no reasons to reconsider the decision as given in the APR order for 2013-14 as per provisions of the section 94(1)(f) of the Electricity Act 2003 read with Order 47 Rule 1 of CPC.

Issue No. 2: Cost of Outsourcing including Manpower & Vehicle hiring



In regard to petition submitted by the West Bengal Power Development Corporation Limited for fresh consideration of issues in the Fuel Cost Adjustment (FCA) and Annual Performance Review (APR) for the financial year 2013-14 in terms of the order dated 15.07.2019 passed by the Hon'ble Appellate Tribunal for Electricity in appeal no. 348 of 2017.



- a. Commission has disallowed the claim of Rs. 11628.53 lakhs towards cost of outsourcing including manpower & vehicle hiring expenses which is an uncontrollable head of expenditure for FY 2013-14 in the order.
- b. In APR application for FY 2013-14 WBSEDCL submitted the total cost of outsourcing, including manpower and vehicle hiring expenses as Rs. 21332 lakhs against which only Rs. 9703.47 lakhs is allowed in the APR order for FY 2013-14 in line with the Tariff Order for 2013-14.
- c. The outsourcing costs are those costs which are incurred by the Petitioner due to introduction of new services for compliance of standard of performance issued by Commission such as call center and mobile maintenance services and strengthening of the existing facilities in order to service the increased activities of the consumers. The petitioner therefore outsourced some of these services in order to fulfil requirement of large consumer strength and to improve consumer services under the circumstances of significant increase in the distribution network and consumer strength. However, Commission in the Impugned Order has unjustly disallowed the claim of Rs. 11628.53 lakhs and allowed only Rs. 9703.47 lakhs.
- d. Commission ought to appreciate that the Petitioner incurred additional expenses in the relevant period as there was very significant increase of distribution network and consumer strength in the year 2013-14 over those parameters for the year 2012-13.
- e. In view of the above and also to meet the regulatory requirement of West Bengal Electricity Regulatory Commission (Standards of Performance of Distribution Licensees Relating to Consumer Services) Regulations, 2010 as amended from time to time (SOP Regulations), the Petitioner had continued to increase and spread the activity of different consumer services suitably to other areas as per requirements of consumers. This was also done in order to meet the parameters stipulated in the SOP Regulations to match with the requirements of large consumer base.



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- f. The detailed breakup of the above outsourcing cost incurred by the Petitioner is given in the Table hereinbelow:

Rs. in Lakhs

Sl. No.	Particulars	Claim Amount (manpower related expense) for FY 2013-14
1	Line Maintenance	6273
2	Substation Maintenance	2424
3	Back office job	185
4	Meter Reading	2033
5	Bill Distribution (also named as courier service)	1626
6	Security Expenses	2262
7	Mobile Maintenance Service (MCSU as per SOP Regulation)	4459
8	Call Centre (ZCC/CRC) as per SOP Regulation	2070
Total Outsourcing		21332

- g. Cost of outsourcing is an uncontrollable expense under Regulation 2.5.5 of the 2011 MYT Regulations 2011 and therefore, the Commission ought to allow the same on actuals.

Observation of the Commission:

The Commission decided the amount of allowable cost of outsourcing in respective APR order for 2013-14 as per provision of Tariff Regulations and passed the order accordingly. The Commission thus decided not to consider any further claim of WBSEDCL against outsourcing cost which has been disallowed in the order with specific reasons. However, this does not come under the scope of review under section 94(1)(f) of the Electricity Act, 2003 read with order 47 Rule 1 of CPC.

Issue No. 3: Operation & Maintenance Expenses

- a. In the impugned order Commission has disallowed the operation and maintenance expenses of Rs. 10316.09 lakhs and admitted only Rs. 34898.91 lakhs for FY 2013-14
- b. Operation & Maintenance (O&M) expenses generally fall under following two major categories:



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- i) Repairs and Maintenance (R&M) including cost of consumables
 - ii) Administrative and General Expenses (A&G)
 - c. R&M expenses and A&G expenses for distribution function are both controllable items as per Table 2.5.5-1 of the MYT Regulations 2011. Total amount of (O&M) expenses for distribution function as allowed in the ARR/Tariff order for the FY 2013-14 was Rs. 34898.91 lakh.
 - d. In respect to R&M expenses it is mentioned that in FY 2013-14, distribution network had increased by 20.48% as has been admitted by the Commission in Para 4.6(i) of the impugned order. Therefore, considering 20.48% increase on account of distribution network in the FY 2013-14 along with inflationary trend of 9.9%, Rs. 24638 lakhs incurred towards R&M expenses including consumables for the year 2013-14 is quite reasonable as the expense in the year 2012-13 was Rs. 21500.49 lakhs, i.e., overall increase of 14.59% only in year 2013-14 from year 2012-13.
 - e. As per clause (v) of Regulation 2.6.10 of the MYT Regulations 2011, a threshold limit of 5% increase in business volume has been specified for considering additional expenditure on controllable item. WBSEDCL claimed Rs. 16154 lakh towards A&G Expenses in their APR application for 2013-14.
 - f. In addition, with respect to A&G expenses, it is submitted that the Petitioner incurred expenditure towards the following:
 - i) License Fee:
 - ii) Advertisement Cost
 - iii) Technical Fee
 - iv) Conveyance & Travel
 - g. Since there has been an increase of 20.48% in distribution line length (DLL) during the year 2013-14 which is more than 5% threshold limit, the Commission may allow additional expenditure in terms of regulation 2.6.10 of the MYT Regulation, 2011.
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- h. A&G expense is a specific expense head as per the regulations and the Commission allows expenses in tariff orders under this head. Expense booked under this head are not included in other heads like outsourcing or employee cost as there is no fungibility/ permeability as such between this head and other heads.
- i. In addition to the same, it is also submitted that the ARR/Tariff Order for FY 2013-14 was issued on 01.12.2012 when the annual accounts for the base year was available to the Commission. However, the Commission considered a reduced amount under different expense heads in the base year from the actual expenditure and made projections thereon. Thus, the admitted amounts in the ARR/Tariff Order were/ are considerably lower than the actual expenditure trend of the Petitioner. Thereafter, the Commission has made further deductions with reference to such low projections made earlier. This inevitably has caused significant under recoveries for the Petitioner specifically in view of the fact that the projected cost did not consider 20.48% increase in distribution line length during the year.
- j. In view of the above submissions, WBSEDCL has prayed to consider their claim on this account and allow the disallowed amount of Rs. 10316.09 lakhs towards the R&M and A&G expenses

Observation of the Commission:

The Commission admitted the O&M expenses of Rs. 34898.91 lakh being the controllable item in the APR order for 2013-14 after considering all the facts stated by WBSEDCL in their APR petition. Thus, the Commission finds no merit in the submission of WBSEDCL to change its decision regarding disallowance of additional claim under the head O&M expenses, being a controllable item for reasons as stated in the APR order. However, this does not come under the scope of review under section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of CPC.

Issue No. 4: Amount withheld for Energy Audit



In regard to petition submitted by the West Bengal Power Development Corporation Limited for fresh consideration of issues in the Fuel Cost Adjustment (FCA) and Annual Performance Review (APR) for the financial year 2013-14 in terms of the order dated 15.07.2019 passed by the Hon'ble Appellate Tribunal for Electricity in appeal no. 348 of 2017.



- a. Commission has withheld 2.5% of the net recoverable amount of Rs. 258156.89 lakhs i.e. Rs. 6453.92 lakhs from the net recoverable amount in view of the fact that as per the Commission, the Petitioner was required to conduct energy audit and to submit segment wise loss data for FY 2013-14. The recoverable amount, thus, comes to Rs.251702.97 lakhs (i.e. Rs. 258156.89 lakh – Rs. 6453.92 lakh) in APR of the Petitioner for the FY 2013-14.
- b. Direction given by the Commission to the petitioner to conduct energy audit and to submit segment wise loss data to the Commission in Tariff Order for the 4th control period, i.e., FY 2014-15, 2015-16 and 2016-17. However, no such direction was given by the Commission for the period under consideration. i.e. for FY 2013-14.
- c. Furthermore, the extant regulatory framework does not include the provision for any such penal provision nor does it empower the Commission to impose such penalty. It is humbly stated that the Commission is not at liberty to impose any penalty beyond the said Regulations.
- d. Any penal consequence can only be imposed in accordance with the provisions of the Electricity Act, and neither the Electricity Act nor the MYT Regulations 2011 empowers the Commission to impose such consequence on the Petitioner.
- e. Commission may reconsider the aforesaid direction which is not in consonance with the Electricity Act as well as the MYT Regulations 2011 and release the amount withheld on account of energy audit.

Observation of the Commission:

The Commission after careful consideration withhold Rs. 6453.92 lakh from the net recovery amount in view of the fact that WBSEDCL had not conducted the Energy Audit and submitted segment wise loss data for FY 2013-14 in their APR petition as directed. Thus the Commission finds no convincing reason to reconsider its decision as given in the APR order..

Issue No. 5: Income from Non-Tariff Sources



In regard to petition submitted by the West Bengal Power Development Corporation Limited for fresh consideration of issues in the Fuel Cost Adjustment (FCA) and Annual Performance Review (APR) for the financial year 2013-14 in terms of the order dated 15.07.2019 passed by the Hon'ble Appellate Tribunal for Electricity in appeal no. 348 of 2017.



- a. Commission has considered to pass an amount of Rs. 2085 lakhs (which is related to sale/ export of power by the Petitioner to Bangladesh) twice to consumers i.e., firstly the Petitioner itself had written back excess provision on account for foreign exchange fluctuation amounting to the aforesaid amount and despite that secondly, this Commission treated the aforesaid amount as part of non-tariff income, which has led to double accounting of the same amount. This has resulted in passing on benefit associated with the aforesaid twice to the consumers and to that extent cause over recovery from the Petitioner.
- b. A total amount of Rs. 42760 lakh was considered towards the estimated earnings of the Petitioner from other non-tariff sources and income from investment.
- c. During FY 2013-14, the Petitioner had written back excess provision on account for foreign exchange fluctuation amounting to Rs. 2085 lakhs. Therefore, this amount was duly included in 'Income from non tariff sources' in the APR application for FY 2013-14 by the Petitioner and was already considered in the estimated earnings of WBSEDCL from other non-tariff sources. Rs. 2085 lakhs was earned by the Petitioner which was a positive income related to sale/ export of power by the Petitioner under the contract with Bangladesh.
- d. However, in the order, the Commission while computing the benefit passed on to the consumers and other licensee in Para 4.24.3, has considered Rs. 2085 lakh again in order to compute total revenue earned by such sale to persons other than licensee and its own consumers.
- e. Hence Effectively the Commission has considered to pass on Rs. 2085 lakh twice, instead of reducing the non-tariff income by similar amount in the event of considering excess provision on account for foreign exchange fluctuation amounting Rs. 2085 lakhs as total revenue earned for sale to other than consumers and Licensees.



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- f. In view of that WBSEDCL has prayed before the Commission not to consider the amount of Rs. 2085 lakhs again in order to compute total revenue earned by such sale to persons other than licensee and its own consumers.

Observation of the Commission:

Commission considers the income from Non-Tariff sources and revenue earned from sale of surplus power to persons other than consumers and licensee based on the information documents submitted by WBSEDCL along with their APR petition. Computations of 'Income from other sources' is in order and in sync with Annual Accounts 2013-14 of WBSEDCL. However, WBSEDCL's contention at para 59 of their review petition, regarding double consideration of the item of write-back of excess provision for foreign exchange fluctuation of Rs 2085 lakhs in 2013-14 both in income from other sources and in computation of revenue earned by sale to persons other than licensees and its own consumers appears to have no impact on ARR. If the sales revenue earned from sale to person other than licensee and own consumers in para 4.24.3 of the impugned order is changed to Rs 100362.00 lakh instead of Rs 102447.00 lakh (Rs 102447.00 lakh- Rs 2085.00 lakh) the resultant amount of gain derived from such sale shall be Rs (-)12402.99 lakh instead of Rs (-) 10317.99 lakh as mentioned in order. It was decided in para 4.24.4 of the impugned order no gain was passed on to consumers since there was accumulated loss. Thus, there will be no impact on additional recovery as admitted in the impugned order dated 14.07 2021. Thus there is no valid reason to review the decision of the Commission as per provision of section 94(1)(f) of the Electricity Act, 2003. . However, Commission decides to amend the paragraph 4.24.3 as follows:

"4.24.3 WBSEDCL sold 1730.454 MU of power to persons other than the licensees and its own consumers after adjusting the normative transmission loss @ 3.4% for sale of such power. The total revenue earned by such sale came to Rs. 54202.00 lakh (Rs. 57929.00 lakh - Rs. 3727.00 lakh) [vide Note 21 and Note 22 to the audited accounts for 2013 - 2014 and the observations in paragraph 4.24.2 above and the



submission made by WBSEDCL in paragraph 1.24 to Annexure - 1 of their petition]. WBSEDCL also swapped out 1273.993 MU during the year 2013-2014 after adjustment of the normative transmission loss @ 3.4% for such swapped out power and revenue income from such energy swapped out is Rs 46160.00 lakh (vide Note No.21 to the audited accounts for 2013 – 2014). So total revenue earned from such sale comes to Rs.100362.00 lakh (Rs. 54202.00 lakh + Rs. 46160.00 lakh). The gains derived through such sale work out as under:

Sl. No	Particulars	Amount (Rs in lakh)
1	Sales Revenue earned	100362.00
2	Less: Cost of power for such sale	112764.99
3	Amount of gains derived by such sale	(-) 12402.99

Issue No. 6: Other Expenses

- Commission in para 4.28.1 of the impugned order has held that expenditure incurred by the Petitioner on account of (i) loss of obsolete materials and (ii) compensation paid to outsiders on injury/ death/ damages; are related to other general expenses and the same needs to be considered under the O&M head, which is a controllable item. However, according to the Commission, since no amount was admitted in the ARR order under this head separately, it decided that no amount would be admitted under this head in the APR for FY 2013-14.
- However, in contrast to the above, the Commission in para 4.6 (iv)(c) of the order, has taken a separate view in respect of compensation paid to outsiders on injury/ death/ damages.
- Compensation paid by WBSEDCL to outsiders on injury/ death/ damage is contingent in nature and cannot be envisaged either by this Commission or by the licensees and therefore, could not have been accounted for as part of O&M expenses or controllable in nature in any other way. The expenses incurred for



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payments related to compensations for injury/ death/ damages to the outsiders does not occur in the regular course of business. They are in the nature of the contingent liabilities and cannot be recorded as part of usual business of the distribution licensee.

- d. Once this Commission came to the conclusion that the amount of Rs. 239 lakhs is considered to be admitted in APR for 2013-14 under the head 'other', the Commission ought to have ensured that the said amount is allowed to be recovered and rather not have taken an approach where the same was rejected on a very technical premise that since no amount was admitted in the ARR under this head separately, the same cannot be allowed to be recovered. It is like despite there being a wrong which is acknowledged, no remedy can be offered. This Commission is meant to do substantive justice and therefore, without taking a very technical as well as contradictory approach as explained above, this Commission ought to have ensured the recovery of the aforesaid amount.
- e. In view of the above submission, it is prayed before the Commission to allow the expenses of Rs. 239 lakhs compensation paid to outsiders on injury/ death/ damage and not consider the same as a controllable expense.

Observation of the Commission:

Commission considers the other expenses based on the documents/ information submitted by WBSEDCL along with their APR petition for 2013-14. Thus there is no scope to review the decision of the Commission as per provision of section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of CPC.

Issue No. 7: Employee Cost for FY 2013-14

- a. Commission in the ARR order allowed a total of Rs. 95842 lakhs towards employees' cost including terminal benefit. Employees' cost including the provisions for terminal benefits are the uncontrollable elements of fixed charges.



In regard to petition submitted by the West Bengal Power Development Corporation Limited for fresh consideration of issues in the Fuel Cost Adjustment (FCA) and Annual Performance Review (APR) for the financial year 2013-14 in terms of the order dated 15.07.2019 passed by the Hon'ble Appellate Tribunal for Electricity in appeal no. 348 of 2017.



- b. In contrast, the Petitioner claimed Rs. 117091 lakhs on account of employee cost in its APR application for FY 2013-14. The amount of Rs. 117091 lakhs as claimed by the Petitioner is inclusive of prior period payment of Rs. 7 lakh paid to the employees for whom pay fixation was made on a later date in the year 2013-14 and Rs.22 lakhs made to staff on death/ injuries.
- c. Total amount chargeable to revenue account of the Petitioner towards employees' cost comes to Rs. 117091 lakhs (Rs. 117062 lakhs + Rs. 22 lakhs + Rs. 7 lakhs) including Terminal Benefits and net of capitalization but excluding service tax on staff welfare expenses.
- d. With regard to Terminal Benefits, the Commission had given directions in paragraph 10.6 of the ARR Order for the years 2011-12 and 2012-13 dated 01.12.2012 in Case No. TP-53/12-13 and also in paragraphs 4.3 and 4.4 of the APR order of FY 2012-13 dated 12.06.2014 in Case No. APR-38/13-14. However, the Commission noted in the order that the Petitioner has failed to deposit the required amount of fund to the Terminal Benefit Trusts and there was a shortfall of Rs. 48658.75 lakhs.
- e. Commission allowed Rs.3995.79 crore (which includes release of Regulatory Assets of Rs. 1034.65 crore for Revision of Pay and Allowances (ROPA) in ARR & APR orders of 2007-08 to 2013-14 on account of Terminal Benefits. The Commission allowed Rs. 538.54 crore in Tariff Order of 2011-12 to 2013-14, and made negative adjustment of Rs. 119.79 crore in APR 2008-09 out of Rs. 1034.65 Crore under the head Regulatory Assets of ROPA. The Commission actually allowed Rs. 3619.47 crore in Tariff order out of admitted amount of Rs. 3995.79 crore from 2007-08 to 2013-14.
- f. During the period from FY 2007-08 to FY 2013-14, the petitioner disbursed Rs. 2427.91 crore on account of Terminal Benefits. Balance of Rs. 1071.77 crore on account of Terminal Benefits cannot be disbursed till issuance of Tariff order for FY 2013-14 and APR order of FY 2012-13, because the Commission admitted Regulatory Assets amounting to Rs.1862.43 crore but the said amount



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was released/ adjusted after FY 2014-15 in tariff orders. Further the following may also be considered:

- i) On number of occasions, this Commission allowed to recover ordered amount in phased manner.
 - ii) On some occasion, tariff orders were issued at the far end of the financial year. As a result, advice of this Commission regarding payment of terminal dues to Trust Funds could not be complied in due time.
 - iii) During the period from FY 2007-08 to FY 2013-14 and even in subsequent years, not a single case happened where the Petitioner could not pay terminal liability of any individual employee in time for fund crisis. Any shortfall of money of the trust to pay Pension and Gratuity is always met by the Petitioner.
- g. It is expected that with the release of pending regulatory assets, APR and tariff orders, there will be substantial improvement of fund flow position of the Petitioner from where pending dues to Trust Funds will be paid in full. Accordingly, it is prayed to this Commission to release the pending regulatory assets by way of timely issuing the APR and tariff orders.

Observation of the Commission:

The Commission after careful consideration withhold Rs. 48600 lakh from the Gross ARR of WBSEDCL for 2013-14 stating reasons thereof. Thus the Commission has no opportunity to reconsider its decision on withholding amount, as prayed for by WBSEDCL in the instant review petition, as per provision of section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of CPC. However, WBSEDCL has liberty to claim the withhold amount after depositing the short fall amount in their terminal benefit funds as directed in the APR order.

Issue No. 8 : Sharing of Benefit from Sale to Consumers and Licensees (Form 1.24 of the APR application)



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- a. In the APR order of 2013-14 the Commission has considered to calculate the benefit accrued from sale to persons other than consumers and licensees based on the weighted average pool cost of power. It is the submission of WBSEDCL to consider the same as per the average variable cost calculated in the corresponding FPPCA application and order.
- b. The inherent nature of electricity business is that power demand of the consumers varies within different period of the day and season to season. During surplus situation, the Petitioner is compelled to balance demand and availability to maintain grid discipline either by backing down the generation or sell surplus power to the persons other than its own consumer and licensees and/or banking of surplus power. The sale of surplus power is done keeping in mind the maximum benefit of Petitioner's consumers and thus such sale is done where no burden of variable cost (fuel cost of generation) will pass on to consumers, as well as part recovery of fixed cost (capacity charge) of power purchase, if possible, since such burden of capacity charge of power station in any case is payable by DISCOMs (i.e. consumers) in case of declaring availability by generators.
- c. Sale of surplus power through bi-lateral contracts or on power exchanges, is generally looked at as distress sale and in such scenario, more often it is not possible for the Petitioner to realize the full tariff i.e., fixed cost plus variable cost of such power or in other words, the pooled or average power purchase cost. Rather, the Petitioner mostly is able to realize the variable cost so that burden of fuel cost does not get passed on to consumers and if there is any additional margin which the Petitioner receives, the same is used towards reducing its fixed cost burden. Thus, calculation done on the basis of average pooled cost for the purpose of ascertaining amount received from sale of surplus power in such scenario, gives an inflated figure. However, the under recovery to the extent for difference in average pooled price and the actual variable cost at which the surplus power sold is burdened on the Petitioner and thus, entails adverse financial implication on the Petitioner.



In regard to petition submitted by the West Bengal Power Development Corporation Limited for fresh consideration of issues in the Fuel Cost Adjustment (FCA) and Annual Performance Review (APR) for the financial year 2013-14 in terms of the order dated 15.07.2019 passed by the Hon'ble Appellate Tribunal for Electricity in appeal no. 348 of 2017.



- d. The Commission computed amount of negative gain (i.e., loss) from such sale as Rs 10317.99 lakhs considering power purchase cost of Rs 112764.99 lakhs for surplus sale quantum at average power purchase rate (i.e., average of variable cost plus full capacity charge plus Rs 3727 lakh expenditure incurred for such sale) (refer Para 4.24.1 - 4.24.3 at Page 57 - 58 of Impugned Order) and deducted the entire above sale quantum while arriving at admissible power purchase cost for consumer sale of WBSEDCL (refer para 3.6.3.1-3 at page 13-14).
- e. As mentioned above, the resultant effect is admission of full power purchase cost where revenue realized is less from such sale. In view of above, the total proportionate power cost incurred for sale of surplus power to the persons other than its own consumer and licensees shall be calculated on the basis of variable cost of the average power and the consequential impact on allowable power purchase cost and amount of gain for such sale may be modified accordingly

Observation of the Commission:

Commission after careful consideration and as a prudence continue with the process of computation of cost of surplus power sold to persons other than own consumers and licensees based on average power purchase cost. The Commission is not convinced to reconsider its earlier decision as given in the APR order for 2013-14 and to review the same under section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of CPC.

Issue No. 9: Interest on Loan

- a. The petitioner has claimed interest on capital borrowing for the year 2013-14 at Rs. 48706 lakh and as against that this Commission admitted interest on capital borrowing payable during 2013-14 at Rs. 48628.00 lakh without making any adjustment for prior period as claimed by the Petitioner. This was rejected by this Commission on the ground that it is not clear whether those prior period expenditure and income from interest on loan are related to capital borrowing or short term loan.



In regard to petition submitted by the West Bengal Power Development Corporation Limited for fresh consideration of issues in the Fuel Cost Adjustment (FCA) and Annual Performance Review (APR) for the financial year 2013-14 in terms of the order dated 15.07.2019 passed by the Hon'ble Appellate Tribunal for Electricity in appeal no. 348 of 2017.



- b. It is most humbly submitted that during FY 2013-14, the Petitioner had to incur some prior period expenditure on account of interest with respect to capital borrowings. Simultaneously, there was a prior period income due to change in rates against capital borrowings which amounted to Rs 110 lakhs. Therefore, a total of Rs 78 lakhs has been considered as expenditure on account of prior period interest cost on capital borrowings. However, the same could not be capitalized as it was related to prior period.
- c. In any event, if this Hon'ble Commission wanted to get any clarity in the nature of loan i.e., capital borrowing or short term loan, it ought to have sought necessary clarifications from the Petitioner as it was doing in case of various other aspects. As regards the nature of loan, it is clear from review of the revenue schedule that the expenditure for which loan has been taken is not capital in nature and that it has been and is apparent the nature of expenditure is revenue.
- d. In view of the foregoing, it is requested to allow the amount of Rs. 78 lakhs as expenditure on account of prior period interest cost on capital borrowings.

Observation of the Commission:

The Commission after prudence and stating the reasons in the impugned order decided not to consider the prior period interest in computation of interest on Capital borrowing for the year 2013-14. The deliberation in the review petition does not suggest to review its own order.

Issue No. 10: Reserve for Unforeseen Exigencies

- a. It is submitted that the Report of Auditor (Annexure-B) reveals that the closing balance under head "Reserve for Unforeseen Exigencies" was Rs. 14456 lakhs as on 31.03.2014 vide note no: (2)'Reserve & Surplus" of Audited Annual Accounts for FY- 2013-2014.
- b. Besides above, the Petitioner's Investment in Fixed Deposit with bank against such "Reserve for unforeseen Exigencies" was Rs. 13456 lakhs vide note no: (18) "Cash and Bank balance" of Audited Annual Accounts for FY-2013-2014.



In regard to petition submitted by the West Bengal Power Development Corporation Limited for fresh consideration of issues in the Fuel Cost Adjustment (FCA) and Annual Performance Review (APR) for the financial year 2013-14 in terms of the order dated 15.07.2019 passed by the Hon'ble Appellate Tribunal for Electricity in appeal no. 348 of 2017.



Thus, there was a shortfall of Rs 1000 lakh as on 31.03.2014 which ought to be allowed by this Hon'ble Commission.

Observation of the Commission:

This does not come under the scope of review under section 94(1)(f) of the Electricity Act, 2003 read with order 47 Rule 1 of CPC.

ORDER

- 4.0 In view of the Commission's observation issue wise in paragraphs above Commission does not find any well founded and cogent reason to review its decision as given in the APR order for 2013-14 even after considering the deliberation made in the review petition in compliance to order of Hon'ble APTEL.
- 5.0 The Commission, however, amends the paragraph 4.24.3 of the APR order for 2013-14 as mentioned in the observation of the Commission on Issue No. 5: Income from Non-Tariff Sources. The APR order for 2013-14 has been amended to that extent only.
- 6.0 The petition is thus disposed of. Let a copy of the order be served upon WBSEDCL.

**Sd/-
(PULAK KUMAR TEWARI)
MEMBER**

**Sd/-
(MALLELA VENKATESWARA RAO)
CHAIRPERSON**

DATE: 06.04.2023

**Sd/-
SECRETARY**